

REMARKS

Claims 1-4 are pending in the application. It is respectfully submitted that this Response is fully responsive to the Office Action dated October 6, 2008. Reconsideration of the claims and an early notice of allowance is respectfully requested, for the following reasons.

Claim Rejections - 35 U.S.C. §§102 and 103

Claims 1-4 are rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over HONEBEIN (EP 0 343 505) as disclosed by the Applicant.

Independent Claim 1:

The Examiner argues that all of the features of claim 1 are disclosed by Honebein. The reference is in German and the Examiner only refers to the drawings in his rejection of claim 1. Accordingly, we will refer to the drawings as the basis for the Examiner's rejection of claim 1.

The reference discloses a magazine for holding goods in a vending machine (See Figure 1 of Honebein). According to Figures 2-4, the reference discloses two flaps within each magazine shaft. Both flaps pivot and are attached to the wall of the shaft. One flap acts a retaining flap and holds back goods in the shaft while the other flap releases, allowing a good to pass out of the shaft. The retaining flap includes a "bead" on the end not attached to the side of the shaft.

Applicant disagrees with the Examiner's characterization of the Honebein reference. It is submitted that not all of the features of claim 1 are taught by the reference. First, the reference

does not disclose, “retaining element is a resilient thrust piece.” The Examiner argues that the “bead” on the end of the retaining flap is the “resilient thrust piece.” However, it is not clear from the reference what type of material the “bead” is made of nor do the reference drawings show a “resilient”-type function as Figure 4(c) of the claimed invention. If anything, the drawings of the reference show a non-resilient material “bead” at the end of the retaining flap as the “bead” does not appear to change form at all. Therefore, Honebein does not disclose, “retaining element is a resilient thrust piece,” feature of claim 1.

Second, the reference does not disclose the feature of claim 1, “wherein the flap and the retaining element are *parts of the pivotal element*.” Figures 2-4 of Honebein clearly show that there are two *separate flaps* that pivot individually and not two flaps that are parts of a pivotal element. The two flaps in Honebein move separately and not as a single unit. As shown in Figures 4(a) through 4(c), the claimed invention is comprised of a unified pivotal element to which both the “flap and the retaining element” are parts. Therefore, Honebein does not disclose, “wherein the flap and the retaining element are parts of a pivotal element,” feature of claim 1.

Finally, the reference does not disclose, “wherein following reverse rotation of the pivotal element, the flap is located *transversely* in the shaft and holds back the cigarettes, whilst the retaining element is located *outside the shaft*.” The retaining flap of Honebein is not positioned transversely in the shaft and is instead almost parallel to the shaft at all times, even when holding back goods in the shaft (See 16, Figures 2-4). Additionally, the retaining flap of Honebein is never outside of the shaft and is actually pivotally attached to the inside of the shaft. Therefore,

Honebein does not disclose, "wherein following reverse rotation of the pivotal element, the flap is located transversely in the shaft and holds back the cigarettes, whilst the retaining element is located outside the shaft," feature of claim 1.

In view of the above, Honebein fails to disclose many features of claim 1. Claims 2-4 are directly or indirectly dependent on claim 1 and, therefore, are also not disclosed by Honebein.

In view of the above remarks, Applicant submits that the claims are in condition for allowance. Applicant requests such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



John P. Kong
Attorney for Applicant
Registration No. 40,054
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

JPK/af